

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 21 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CARMEN R.,)	2 CA-JV 2010-0008
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, ANGELINA G., and YELENA)	
G.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J08881900

Honorable Patricia G. Escher, Judge

AFFIRMED

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

Curtis & Cunningham
By George Haskel Curtis

Tucson
Attorneys for Appellees
Angelina G. and Yelena G.

H O W A R D, Chief Judge.

¶1 Carmen R., the maternal grandmother/adoptive mother of Angelina G. and Yelena G., born in 2001 and 2003, respectively, appeals from the juvenile court’s order terminating her parental rights to the children based on neglect or abuse and length of time in care.¹ See A.R.S. § 8-533(B)(2), (8)(c).² On appeal, Carmen argues there was insufficient evidence to support the court’s findings that she was unable to remedy the circumstances that caused the children to be in an out-of-home placement and that the state had diligently provided her with appropriate reunification services. She also challenges the court’s finding that termination was in the children’s best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “On review, . . . we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly

¹The maternal grandfather/adoptive father, Juan, died before the court entered its under-advisement ruling terminating Carmen’s parental rights to the children.

²To justify termination under § 8-533(B)(2), ADES must prove the parent has “neglected or willfully abused a child,” while § 8-533(B)(8)(c) requires ADES to prove that the parent has been unable to remedy the circumstances that have caused the child to remain in an out-of-home placement for fifteen months or longer and there is a substantial likelihood the parent will be unable to parent the child in the near future.

erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court’s ruling. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Carmen cared for the children from birth. Angelina has Asperger’s syndrome and post-traumatic stress disorder related to “being fearful of [her birth] mother.” Yelena has autism and lacks the basic skills necessary to feed, bathe, and dress herself appropriately. Child Protective Services (CPS) removed the children from Carmen’s home in 2006 because of unsanitary conditions and Carmen’s inability to parent the children due to her own health issues, but it later returned the children to her care.

¶4 In a 2006 team decision making summary report, CPS noted with concern that Carmen had permitted the biological mother, Maria,³ to have contact with the children, despite the fact that Maria had injured the children in the past. Based on Maria’s severe mental health issues, her parental rights to the children had been terminated in an earlier proceeding. In October 2007, CPS noted it had “continuous concerns about Carmen . . . allowing [Maria] to have contact including unsupervised contact with [the] children,” despite the department’s direction not to allow contact. In February 2008, police conducted a welfare check at Carmen’s home in response to a report that Maria had come to one child’s school “covered in urine or something that

³Maria is also referred to as Isabella and Isabel.

smelled like urine.”⁴ The Arizona Department of Economic Security (ADES) took custody of the children after discovering they had missed a significant amount of school⁵ and the family home had “a strong smell of urine, feces stains on the carpet, cockroaches and rotting food in the broken refrigerator, no beds . . . and piles of clothing, garbage and food.” “Yelena was dirty and had dried mucus on her entire face.” Maria, who was found hiding in the bathroom, told police she had been in the home for more than two weeks; school officials also reported that Maria had been transporting the children to school.

¶5 ADES filed a dependency petition alleging: Carmen was unable to effectively and safely parent the children due to her physical disabilities, which include advanced diabetes and her failure to wear her prosthesis; Carmen had not been taking the children for services to address their “significant emotional, physical and mental delays”; the children had missed fifty-two days of school; and Maria was present in the home, purportedly without Carmen’s knowledge. After Carmen pled no contest to the allegations, the juvenile court adjudicated the children dependent, affirmed a case plan goal of family reunification, and ordered ADES to provide services including parenting classes, a psychological evaluation, and related services, case management services, and visitation.

⁴The dependency petition alleged that a restraining order prohibited Maria from having contact with the children.

⁵Although reports vary, the children either had missed fifty-two or fifty-five days of school.

¶6 At a permanency planning hearing held in January 2009, ADES recommended that Angelina immediately be returned to Carmen and that Yelena be returned once supportive services were in place. However, in an April 2009 permanency planning report, CPS reported that Maria recently had had contact with Carmen and Juan at a local Circle K store, making it “evident” Carmen was unwilling or unable to refrain from contact with Maria and would “fail to protect Angelina . . . from her.” On the fourth day of the permanency planning hearing in April 2009, the court found the children could not be returned to Carmen “without a substantial risk of harm.” ADES filed a petition to terminate Carmen’s parental rights two days later. After a six-day contested severance hearing held between July and November 2009, the court terminated Carmen’s rights based on both of the grounds alleged in the petition and found that termination was in the children’s best interests.

¶7 Carmen contends there was insufficient evidence to support the juvenile court’s finding that she was unable to remedy the circumstances that caused the children to be in an out-of-home placement, specifically arguing there was insufficient evidence to find she was unable to protect the children from Maria. In its under-advisement ruling severing Carmen’s rights, the court noted that the police had found Maria hiding in a bathroom at Carmen’s home, where Maria claimed she had been living for several weeks.

The court then concluded:

[Carmen] repeatedly denied allowing Maria to have contact with the girls. The Court does not find her testimony to be credible. The evidence supports a finding that [Carmen] was either unable or unwilling to prevent such contact, and

that she was untruthful to both the case managers and the Court.

. . . .

Based on the foregoing, the Court finds that CPS has proven by clear and convincing evidence that Carmen . . . neglected the children in that she was unable to meet their physical, educational and health needs as a result of her own illnesses and her inability or unwillingness to protect the children from their [biological] mother.

¶8 “We are mindful that our function on review is not to reweigh the evidence before the juvenile court or supersede its assessment of the evidence with our own.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004). The court was presented with evidence of contact between Maria and the children, ADES’s continuing concern that such contact might occur, and Maria’s meeting with Carmen and Juan at the convenience store just a few months before the severance hearing began. In addition, the court specifically found that Carmen was not a credible witness. For all of these reasons, we reject Carmen’s argument that there was insufficient evidence to find her unable to remedy the circumstances that caused the children to be in an out-of-home placement.

¶9 Carmen also argues ADES did not make diligent efforts to provide reunification services, asserting that such services are required regardless of the grounds for severance. Although reunification services are not statutorily required for severance based on neglect or willful abuse, to the extent such services are constitutionally required, they were provided. Because Carmen has not challenged the sufficiency or appropriateness of the services she received, we do not address those services in general.

Instead, we address the two specific arguments Carmen has raised: (1) she was not invited to Yelena's "appointments regarding her special needs"; and (2) although ADES provided Carmen with parenting classes, it did not offer her classes geared toward parents of children with Asperger's syndrome or autism.

¶10 Before terminating a parent's rights pursuant to § 8-533(B)(8), "the agency responsible for the care of the children is under a statutory and a constitutional obligation to make reasonable efforts to reunify the family." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 37, 152 P.3d 1209, 1216 (App. 2007). Although ADES must give a parent the "time and opportunity to participate in programs designed to improve the parent's ability to care for [his or her] child," see *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 37, 971 P.2d 1046, 1053 (App. 1999), it is "not required to provide every conceivable service or to ensure that a parent participates in each service" offered. See *In re Maricopa Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is ADES required to provide services that would be futile. See *Mary Ellen C.*, 193 Ariz. 185, ¶ 34, 971 P.2d at 1053.

¶11 In its ruling terminating Carmen's parental rights, the juvenile court found:

CPS has provided a wide variety of services to [Carmen] and she has participated in them. She has also participated in services for the girls through the school and through [the Department of Developmental Disabilities]. Nonetheless, the Court finds that [Carmen] is unable to meet the very demanding needs of these children. The Court observed her testimony over several hearings. There is no question that she loves the girls. However, [Carmen] does not appear to fully understand the extent of her children's cognitive and behavioral issues, nor is she physically and mentally prepared for the challenges they present. While

there was some evidence that she could parent these children with a comprehensive support network, there was no evidence that she had taken any substantive steps to develop such a network in any way that the Court could find credible.

¶12 Carmen testified that when the children were with her, she had received instruction on speech therapy techniques to use with Angelina and she had attended counseling appointments and sessions with Angelina as well. CPS case manager Richard Maldonado testified that Carmen had been invited to attend Angelina's therapy sessions and meetings with therapists at her school. Although Juan Aguilar, an employee of the Arizona Division of Developmental Disabilities, testified Carmen had not been invited to attend Yelena's appointments in 2009, he explained that the foster parent typically attends those appointments. Carmen also testified Aguilar had been "really, really good" in showing her how to cope with Angelina's special needs and had educated her "on Yelena's autism." Aguilar likewise testified he had instructed Carmen regarding appropriate techniques to use with the children and had educated her about autism. Importantly, Aguilar testified that, even if Carmen had been provided with additional services, she would not have been able to safely meet Yelena's needs. Maldonado similarly testified that, even if more reunification services had been provided, Carmen would not have been in a position to parent the children. Based on this record, we cannot say the juvenile court erred in finding ADES had diligently provided Carmen with appropriate reunification services.

¶13 Finally, Carmen challenges the juvenile court's determination that termination of her parental rights was in the children's best interests, arguing that the

children's current foster families, who speak primarily Spanish, are unable to help them improve their language skills and are, in fact, impeding their development. To establish that termination is in a child's best interests, ADES must prove that the child either would benefit from the severance or be harmed if the parental relationship continued. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). There was more than sufficient evidence to support the court's best interests finding. Maldonado testified that Angelina's foster parents desire to adopt both Angelina and Yelena, who had been living with a different foster family, and that he has "seen nothing but progress" since Angelina moved into her foster home. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court could consider whether current adoptive placement existed or whether existing placement meeting needs). Maldonado also testified that Angelina's foster family is certified to care for a child with developmental disabilities, and that their home is culturally appropriate for the children. He further noted that the family has adopted another non-Spanish-speaking child with autism, who has fit in well with the family. CPS unit supervisor Tammy Lorich testified about CPS's ongoing concern that Carmen cannot protect the children from Maria, and noted the children's need for permanency in light of the length of time they have been in care. She opined that, in light of Angelina's special needs, she did not believe Carmen could care for her. Aguilar testified that Yelena is adoptable, and that, despite Carmen's love for Yelena, severance and adoption would be in her best interests, an opinion Maldonado echoed as to Angelina.

¶14 In addition, to the extent Carmen asserts the “current placement is causing these children a detriment,” and asks that we “remand this case to ensure that these children are in proper placements that are not curbing their development with respect to their special needs,” we reject this argument. With the termination of her parental rights, Carmen lost standing to challenge the court’s decision regarding the children’s placements. *See Antonio M. v. Ariz. Dep’t of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1012 (App. 2009).

¶15 The record amply supports the juvenile court’s termination of Carmen’s parental rights to Angelina and Yelena. Therefore, we affirm.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge